

PORSP 11.3.17.1 V.1
6/30/08

Doc No. 17

USEPA SF



1363963

TABLE OF CONTENTS

SECTION 1

GRANT AND CONVEYANCE	4
1.1 Generally.....	4
1.2 Purpose.....	5

SECTION 2

GRANTOR'S COVENANTS AND WARRANTIES..	6
2.1 Title.....	6
2.2 Payment and Performance of Secured Obligations; Payment of Taxes; Lease Obligations.....	6
2.3 Construction, Maintenance and Repair.....	7
2.4 Compliance With Laws.....	7
2.5 Insurance.....	7
2.6 Condemnation.....	8
2.7 Liens and Encumbrances.....	9
2.8 Indemnification.....	9
2.9 Time.....	10
2.10 Inspections.....	10
2.11 Assignment of Rents.....	10

SECTION 3

DEFAULT.....	10
3.1 Events of Default.....	10
3.2 Remedies.....	12

SECTION 4

MISCELLANEOUS TERMS AND CONDITIONS..	14
4.1 Acceptance of Trust and Notice.....	14
4.2 Powers of Trustee.....	14
4.3 Substitution of Trustee.....	15
4.4 Marshalling of Assets.....	15
4.5 Right to Alter.....	15
4.6 Nonwaiver.....	15
4.7 Rules of Construction.....	16
4.8 Severability.....	16
4.9 Successors in Interest.....	16
4.10 Notices.....	16
4.11 Modifications.....	16
4.12 Attorneys' Fees.....	17
4.13 Nonmerger.....	17
4.14 Priority of Trust Deed.....	17

AFTER RECORDING RETURN TO:
LAURA J. WALKER, ESQ.
1001 S.W. Fifth Avenue
Suite 2000
Portland, Oregon 97204

DEED OF TRUST AND ASSIGNMENT OF RENTS

Dated June 30, 1993.

Grantor: The Marine Salvage Consortium, Inc.
an Oregon corporation
5650 N.E. Columbia Blvd.
Portland, Oregon 97218

Trustee: First American Title Insurance Company
an Oregon corporation
200 S.W. Market, Suite 150
Portland, Oregon 97201

Beneficiary: BBD & R, Inc.
an Oregon corporation
6211 N. Ensign
Portland, Oregon 97217

STATUTORY NOTICE:

A. The address of the person holding a lien or other interest created by this instrument is:

BBD&R, Inc.,
an Oregon corporation,
6211 North Ensign
Portland, Oregon 97217

B. The tax account numbers of the property subject to the lien or in which the interest is created are:

94117-1010

TRUST DEED AND ASSIGNMENT OF RENTS

THIS DOCUMENT CONSTITUTES A FIXTURE FILING

DATE: June 30, 1993

BETWEEN: Marine Salvage Consortium, Inc.
an Oregon corporation
5650 N.E. Columbia Blvd.
Portland, Oregon 97218

"Grantor"

AND: BBD&R, Inc.
an Oregon corporation
6211 N. Ensign
Portland, Oregon 97217

"Beneficiary"

AND: First American Title Insurance Company
an Oregon corporation
200 S.W. Market, Suite 150
Portland, Oregon 97201

"Trustee"

RECITALS:

A. Grantor is the owner of the real property described on Exhibit "A" attached hereto and all improvements located hereon.

B. This Deed of Trust is given to secure payment and performance of: (1) that certain Promissory Note, dated June 30, 1993 wherein Grantor is the maker and Beneficiary is the holder in the principal amount of \$850,000.00, the final payment of the principal and interest, if not sooner paid, is due and payable on June 30, 2003; and (2) that certain Promissory Note dated June 30, 1993 wherein Grantor is the Maker and Beneficiary is the holder in the principal amount of \$100,000.00, and which is due and payable on June 30, 1994. Both of these Promissory Notes are herein collectively called the "Notes".

NOW THEREFORE, for good value and consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto warrant and agree as follows:

SECTION 1
GRANT AND CONVEYANCE

1.1 Generally. Grantor hereby irrevocably grants, conveys, bargains and sells to Trustee, in trust, with power of sale, all of Grantor's right, title and interest, including any after-acquired

right, title and interest, in and to the following described Real Property, Improvements, Tenant Leases and Proceeds (all of which are herein sometimes referred to collectively as the "Premises"):

1.1.1 Real Property. Grantor's interest in the real property described on Exhibit "A" hereto, together with all right, title and interest of Grantor in and to any and all roads, easements, streets and ways, open or proposed, bordering the same, and all rights of ingress and egress thereto (herein the "Real Property").

1.1.2 Improvements. Grantor's interest in all improvements now or hereafter situated upon the Real Property, including without limitation all buildings, structures, fixtures and other improvements of every kind and nature, together with all renewals, accessions, replacements, substitutions, additions, products, proceeds, and proceeds of proceeds (of whatever form and of any generation) thereto and thereof (herein the "Improvements").

1.1.3 Tenant Leases. All of Grantor's right, title and interest in and to all leases and rental agreements for occupants, subtenants and subleases of the Real Property and/or Improvements, or any portion thereof whether now or hereafter existing, together with all amounts receivable thereunder (herein the "Tenant Leases").

1.1.4 Proceeds. Without limiting the foregoing provisions, all insurance and/or condemnation proceeds and awards (including title insurance proceeds) related to the Real Property, the Improvements, and/or any element thereof or interest herein, regardless of form or generation, and regardless of the source of payment of insurance premiums (herein the "Proceeds").

1.2 Purpose. This Trust Deed is given to secure the following (herein collectively the "Secured Obligations"):

(a) Payment and performance of the Notes and any and all interest accrued pursuant to the terms of the Notes;

(b) Payment and performance of any renewals, extensions, substitutions and modifications of the Notes; and

(c) Payment and performance of any other indebtedness or obligation of Grantor to Beneficiary, now or hereafter arising, under the terms hereof, the terms of the Notes, or the terms of any other instrument constituting additional security for the Notes.

SECTION 2
GRANTOR'S COVENANTS AND WARRANTIES

2.1 Title.

2.1.1 Real Property, Improvements, Tenant Leases and Proceeds. Grantor has and shall preserve good and marketable title to the Real Property, the Personal Property, the Tenant Leases and the Proceeds, free of all liens, claims, security interests, encumbrances, easements or restrictions subject only to those exceptions set forth on Exhibit "B" (herein the "Exceptions"). This Trust Deed is and shall remain an enforceable and valid lien on the Premises.

2.1.2 Defense. Grantor has full power and authority to grant, bargain, sell and convey its interest in the Premises, in the manner and form herein done or intended hereafter to be done. Grantor and its successors and assigns shall defend title to the Premises forever against the lawful claims and demands of all persons whomsoever, and shall promptly perform all of the obligations to be performed under this Trust Deed.

2.1.3 Further Assurances. Grantor shall, at its costs, do, execute, acknowledge and deliver all further acts, deeds, conveyances, trust deeds, assignments, notices of assignments, transfers and assurances as Beneficiary shall from time to time require, for the better perfecting, continuing, assuring, conveying, assigning, transferring and confirm unto the Trustee or Beneficiary the Premises, and all rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Grantor may be or may be or may hereafter become bound to convey or assign to the Trustee or Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Trust Deed.

2.2 Payment and Performance of Secured Obligations; Payment of Taxes; Lease Obligations.

2.2.1 Generally. Grantor shall pay and perform as and when due all of the Secured Obligations without offset and without prior notice or demand.

2.2.2 Payment of Taxes. "Taxes" shall mean and include, without limitation, all personal and real property taxes and assessments, both general and special, and all other taxes or impositions, whether public or private, of any kind or nature levied, assessed or imposed upon the Premises. Grantor shall pay when due and before delinquency, all Taxes with respect to the Premises. Grantor shall have the right to pay any Taxes (together with all interest thereon) in installments pursuant to and subject to any statute or ordinance allowing such method of payment,

provided the same is permitted by the terms of the Underlying Encumbrance. Upon demand, Grantor shall provide Beneficiary with evidence, satisfactory to Beneficiary, of all such payments. IF Grantor, in good faith, disputes the amount or validity of any Tax, Grantor may contest the same by any lawful means provided (a) Beneficiary's interest in the Premises conveyed hereby, in Beneficiary's reasonable determination, is not jeopardized by such contest, and (b) Grantor pays promptly all amounts ultimately determined or adjudged to be payable.

2.3 Construction, Maintenance and Repair. Grantor shall keep the Premises in as good an operating order, repair and condition as they presently exit, ordinary wear and tear excepted, and shall not commit or permit any waste thereof. Grantor shall, at its own cost, make all repairs necessary to the Premises and shall complete and restore promptly and in good and workmanlike manner any portion of the Premises which may be constructed, damaged or destroyed, and pay, when due, all costs incurred in connection therewith whether or not sufficient insurance and/or condemnation proceeds are available to pay such costs. The Premises shall be restored and repaired so as to be of at least equal value (to the extent possible in the event of a condemnation) and of substantially the same character as prior to such damage or destruction.

2.4 Compliance With Laws. The Grantor, at its cost, shall comply with all laws, ordinances, regulations, easement agreements, covenants, conditions and restrictions relating to all or any portion of the Premises.

2.5 Insurance and Indemnification.

2.5.1 Property Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement cost basis covering all buildings and improvements, including additions thereto and replacements thereof, in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Beneficiary. The amount of insurance shall in no event be less than the full insurable value of the Premises.

2.5.2 Insurance Companies, Policies and Certificates. Both the insurance company providing the policy required by this Section and the form of the policy must be acceptable to Beneficiary. Grantor shall deliver to Beneficiary a certificate of coverage from the insurer issuing the policy required by this paragraph containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days advance written notice to Beneficiary. Grantor shall deliver to Beneficiary at least 10 days prior to the expiration of any insurance policy required by this Section a certificate showing the placement of a renewal or substitute policy of insurance.

2.5.3 Notice of Loss. In the event of loss, Grantor shall immediately notify Beneficiary, which may make proof of loss if it is not made promptly by Grantor.

2.5.4 Insurance Proceeds. Insurance proceeds shall be paid directly to Beneficiary which may deal directly with any insurance company. If Beneficiary by reason of such insurance receives any money for loss or damage, such amount may, at the option of Beneficiary, either: (i) be retained and applied by Beneficiary toward payment of all or part of the indebtedness secured by this Trust Deed in such order as Beneficiary may determine, without regard to whether or not the security of Beneficiary is impaired, or (ii) be paid over wholly or in part to the Grantor upon such conditions as Beneficiary may determine for the repair of buildings or improvements located on the Trust Property or for the erection of new buildings or improvements in their place or for any other purpose or object satisfactory to Beneficiary. If Beneficiary elects to pay all or a portion of the insurance proceeds to Grantor, Beneficiary shall not be obligated to see to the proper application or any amount paid to Grantor.

2.5.5 Indemnification; No Offsets. If Beneficiary is made a party defendant to any litigation or administrative proceeding concerning this Trust Deed, The Premises, or any part or interest of or in the Premises, then Grantor shall indemnify, defend and hold Beneficiary harmless from all liability by reason of said litigation or administrative proceeding, including reasonable attorneys' fees and expenses incurred by Beneficiary in or pertaining to the same, whether or not any such litigation is prosecuted to judgment. All of the Secured Obligations shall be paid and performed without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Grantor under this Trust Deed shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Premises or any part or interest of or in the Premises; (ii) any restriction or prevention of or interference with any use of the Premises or any part or interest of or in the Premises; or (iii) any title defect or encumbrance or any eviction from the Premises or any part or interest of or in the Premises by title paramount or otherwise.

2.6 Condemnation.

2.6.1 Notice of Taking or Condemnation Proceeding. If the Premises or any part thereof or interest therein, should be taken or damaged by reasons of any public improvement or condemnation proceeding, or if Grantor should receive any notice or other information regarding a condemnation proceeding or similar type of proceeding, Grantor shall immediately notify Beneficiary.

2.6.2 Condemnation Proceeds. Beneficiary shall be entitled to all compensation, awards and other payments or relief related to condemnation up to the then remaining amount due Beneficiary under the Notes or this Trust Deed, and shall be entitled at its sole option to commence, appear in and prosecute in its own name any such action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Grantor (Condemnation Proceeds) are hereby assigned to Beneficiary up to the amount then remaining due Beneficiary under the Notes and this Trust Deed, and Grantor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary may require. Beneficiary shall have the option, in its sole and absolute discretion, to either:

(a) apply such Condemnation Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney fees incurred by Beneficiary in connection with such Condemnation Proceeds, upon all or part of the indebtedness secured by this Trust Deed in such order as Beneficiary may determine, without regard to whether or not the security of Beneficiary is impaired, or

(b) apply all of such Condemnation Proceeds, after deducting all of Beneficiary's costs and expenses, to the restoration of the Premises upon such conditions as Beneficiary may determine.

2.7 Liens and Encumbrances. Grantor shall pay, when due, all lawful obligations, claims or demands of any person which, if unpaid, might result in, or permit the creation of, a lien or encumbrance, whether junior or senior to this Trust Deed on the Premises or any part or interest of or in the Premises claimed through Grantor or by reason of any act or mission of Grantor, including all claims of mechanics, materialmen, laborers and others for work or labor performed or materials or supplies furnished in connection with any work, alteration, improvement of or construction upon the Premises; provided, however, that in the event Grantor disputes the amount or validity of any claims which constitutes a lien or encumbrance of the type described above, Grantor may contest such claims provided Grantor lawfully causes such lien to be removed from the Premises within forty-five (45) days of the filing of such liens or claims. This provision does not apply to the Exceptions.

2.8 Indemnification. The Grantor shall appear in and defend any suit, action or proceeding that might in any way, in the reasonable judgment of Beneficiary, affect the Premises or the rights and powers of Beneficiary. Grantor shall, at all times,

defend, indemnify, hold harmless, and, on demand, reimburse, Beneficiary for any claim, loss, damage, expense or cost, including cost of title searches and attorney fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Trust Deed, shall bear interest at the rate provided in the Notes, and shall be due and payable on demand. Grantor shall pay the cost of suit, cost of evidence of title and reasonable attorneys fees at both the trial and appellate level in any proceeding or suit brought by Trustee or Beneficiary to foreclose this Trust Deed.

2.9 Time. Time is of the essence of this Deed of Trust.

2.10 Inspections. Beneficiary, and its agents, representatives and workmen, are authorized, subject to the rights of tenants, but not obligated, to enter at any reasonable time upon the Premises for the purpose of inspecting the same, and for the purpose of performing any of the acts it or Grantor is authorized to perform under the terms of this Trust Deed or any other instrument evidencing or securing the Secured Obligations.

2.11 Assignment of Rents.

As additional security, Grantor hereby assigns to Beneficiary all rents, income, and profits arising from the Premises, and all of Grantor's right, title and interest as lessor under all leases and rental agreements related to the Premises. The acceptance of this assignment and/or the collection of rents by Beneficiary shall not constitute a waiver of any other right of Beneficiary hereunder. Grantor shall have the right to collect, retain and use rentals from the Premises prior to an Event of Default. This assignment shall not operate to place the responsibility for the control, care, management, or repair of the Premises upon Beneficiary. Upon an Event of Default, Beneficiary shall have the right, at its election, to collect the rents, income and profits arising from the Premises, without impairing any other right of Beneficiary; failure to exercise such rights shall not constitute a waiver of such right nor or any Event of Default.

SECTION 3 DEFAULT

3.1 Events of Default. The following shall be deemed to be Events of Default hereunder:

3.1.1 Failure by Grantor to make any payment when due in accordance with the terms of this Trust Deed, or of the Notes, of any other agreement or instrument which evidences or secures the Secured Obligations, or of any other agreement or instrument executed by Grantor in favor of Beneficiary, provided that Beneficiary may not accelerate the indebtedness or commence foreclosure without five days prior written notice of default.

3.1.2 Failure by Grantor to perform any of the other terms, covenants and conditions set forth in the Notes or this Trust Deed, or any failure to perform any term, covenant or condition set forth in any document evidencing or securing the Secured Obligations, or in any other agreement or instrument executed by Grantor in favor of Beneficiary, within thirty (30) days or written notice for Beneficiary specifying the exact nature of the default, or, in the event that such default cannot be cured within such thirty (30) day period, Grantor fails to commence the cure of such default within thirty (30) days and fails to pursue such curative action to completion.

3.1.3 Breach of any warranties or representations given by Grantor to Beneficiary.

3.1.4 Default of the terms of any other lien or encumbrances secured by the Premises;

3.1.5 Should the Grantor:

3.1.5.1 Become insolvent, file a petition in voluntary bankruptcy or for an arrangement or reorganization pursuant to the Federal Bankruptcy Statutes, or any similar law, state or federal, whether now or hereafter existing (hereafter referred to as a "Bankruptcy Proceeding");

3.1.5.2 File an answer admitting insolvency or inability to pay its debts;

3.1.5.3 Fail to obtain a vacation or stay of any involuntary bankruptcy proceeding within one hundred eighty (180) days of commencement thereof;

3.1.5.4 Be adjudicated a bankrupt or declared insolvent in any Bankruptcy Proceeding;

3.1.5.5 Have a trustee or receiver appointed for or have any court take jurisdiction of its property, or the major part thereof, in any involuntary proceeding for the purpose of liquidation if such trustee or receiver shall not be discharged or if such jurisdiction be relinquished, vacated or stayed on appeal or otherwise within one hundred eighty (180) days;

3.1.5.6 Make an assignment for the benefit of its creditors;

3.1.5.7 Admit in writing its inability to pay its debts generally as they become due; or

3.1.5.8 Consent to an appointment of a receiver or trustee of all its property, or the major part thereof.

3.1.6 Sale or Transfer of Possession. The sale or transfer of possession of the Premises or any part thereof in any manner by Grantor, whether by deed, contract of sale, or similar agreement, without the prior written consent of Beneficiary. The execution and delivery by the Grantor of any joint venture agreement, partnership agreement, declaration of trust, option agreement or other instrument whereunder any other person may become entitled, directly or indirectly, to the possession or enjoyment of the Premises, or the income or other benefits derived or to be derived therefrom, shall in each case be deemed to be a sale or transfer of Grantor's interest in the Premises for the purposes of this Section. Grantor acknowledges that the loan secured by these Premises is personal to Grantor and that in making it Beneficiary has relied on Grantor's credit, Grantor's interest in the Premises and financial market conditions at the time this loan is made.

3.1.7 Any act, event, condition or omission occurs or exits which, alone, together, and/or together with notice and/or the passage of time constitutes or would constitute an event of default under this Trust Deed.

3.2 Remedies. In addition to any other rights and remedies provided in the Notes, in any document evidencing or securing the Secured Obligations, or available at law or in equity, Beneficiary shall have the following rights and remedies upon and after any Event of Default.

3.2.1 Acceleration. The Beneficiary, by written notice given to the Grantor, may declare the entire unpaid principal balance of the Notes and/or of any other Secured Obligation, and all accrued unpaid interest thereon, immediately due and payable.

3.2.2 Possession. The Beneficiary, personally or by its agents or attorneys, or through a duly appointed receiver, may enter into and upon all or any part of the Premises and may exclude the Grantor and its agents wholly from the Premises; and, having and holding the same, may use, operate, manage, improve and control the Premises and conduct the business previously conducted by Grantor on the Premises. The Beneficiary shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Premises and every part thereof whether or not Beneficiary, or a receiver is then in possession of the Premises.

3.2.3 Foreclosure, Receiver, Etc. To the extent allowed by law, the Beneficiary, personally or its agents or attorneys, may:

3.2.3.1 Sell all or any of the Premises and otherwise exercise the power of sale granted herein by nonjudicial foreclosure in the manner provided by law;

3.2.3.2 Institute proceedings for the complete or partial judicial foreclosure of this Trust Deed in the manner provided by law;

3.2.3.3 Apply to any court of competent jurisdiction for the appointment of a receiver or receivers for the Premises to operate the same and collect all the earnings, revenues, issues, profits and income therefrom;

3.2.3.4 Take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Notes or in this Trust Deed, or in aid of the execution of any power granted, or for any foreclosure under this Trust Deed, or for the enforcement of any other legal or equitable remedy or otherwise as the Beneficiary shall elect; and/or

3.2.3.5 Perform Grantor's obligations under the Underlying Encumbrance on behalf of Grantor.

3.2.4 Sale Proceeds. The foreclosure sale proceeds, together with any other sums which then may be held by the Trustee or Beneficiary under this Trust Deed, whether under the provisions of this Section or otherwise, shall be applied, to the extent permitted by law, in the following order of priority:

3.2.4.1 To the payment of the costs and expenses of such sale, including reasonable compensation to the Trustee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Trustee or Beneficiary under this Trust Deed, together with interest at the rate of interest per annum set forth in the Notes from the date of each advance.

3.2.4.2 To the payment of the whole amount then due and owing or unpaid upon the Notes for principal and interest.

3.2.4.3 To the payment of any other sums secured by this Trust Deed.

3.2.4.4 To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

3.2.5 Foreclosure Sale. Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a

judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the interests so sold or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Grantor secured by this Trust Deed the net sales price after deducting therefrom the expenses of the sale and the cost of the action under this Trust Deed. The Beneficiary, upon so acquiring any such interest, shall be entitled to hold, lease, rent, operate, manage and sell the same in any manner provided by applicable laws.

3.2.6 Remedies Not Exclusive. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given under this Trust Deed or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue consistent remedies. If there exists additional security for the performance of the obligations secured hereby, Beneficiary, at its sole option and without limiting or affecting any rights or remedies under this Trust Deed, may exercise any of the rights and remedies to which it may be entitled under this Trust Deed either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

SECTION 4 MISCELLANEOUS TERMS AND CONDITIONS

4.1 Acceptance of Trust and Notice. The Trustee accepts this trust when this Trust Deed, duly executed and acknowledged, is recorded. Trustee is not obligated to notify any party hereto of pending sale under any other Trust Deed or if any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless Trustee brings such action.

4.2 Powers of Trustee. From time to time, upon written request of Beneficiary, and the consent of Grantor if Grantor is not then in default, and presentation of this Trust Deed for endorsement, and without affecting the Secured Obligations, Trustee may, without liability therefore and without notice: reconvey all or any part of the Premises; consent to the making of any map or plat of the Premises; join in granting any easement on the Premises; join in any declaration of covenants and restrictions; or join in any extension agreements or any agreement subordinating the lien of this Trust Deed. Trustee or Beneficiary may from time to time apply in any court of competent jurisdiction for aid and direction in the execution of the trusts under this Trust Deed and the enforcement of the rights and remedies available under this Trust Deed, and Trustee or Beneficiary may obtain orders or decrees

directing or confirming or approving acts in the execution of said trusts and the enforcement of said remedies. Grantor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of the trusts created under this Trust Deed, including reasonable attorneys' fees, to the extent allowed by law. Grantor indemnifies Trustee and Beneficiary against all losses, claims, demands and liabilities which either may incur, suffer or sustain in the execution of the trusts created under this Trust Deed or in the performance of any act required or permitted under this Trust Deed or by law.

4.3 Substitution of Trustee. From time to time, by a writing signed and acknowledged by Beneficiary and filed for record in the Office of the Recorder of the County in which the Premises are situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall refer to this Trust Deed and set forth the date, book and page of its recordation. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the Trustee under this Trust Deed with the same effect as if originally named trustee. A writing recorded pursuant to the provisions of this paragraph shall be conclusive proof of the property substitution of such new trustee.

4.4 Marshalling of Assets. Grantor, on its own behalf and on behalf of its successors and assigns, hereby expressly waives all rights to require a marshalling of assets by the Trustee or Beneficiary or to require Trustee or Beneficiary to first report to the sale of any portion of the interests conveyed hereby which might have been retained by Grantor before foreclosing upon and selling any other portion as may be conveyed by the Grantor subject to this Trust Deed.

4.5 Right to Alter. Without affecting the liability of any other person for the payment of the Secured Obligations (including Grantor, in the event of a Sale) and without affecting the lien or priority of this Trust Deed upon the Premises, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any obligations or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Premises, and take or release any other security.

4.6 Nonwaiver. By accepting payment of any part of the Secured Obligations after its due date or late performance of any part of the Secured Obligations, Beneficiary shall not waive its right against any person, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare a default for failure to make such payment or performance. No exercise of any right or remedy by Trustee or Beneficiary under this Trust Deed shall constitute a waiver of any other right or remedy under this Trust Deed, in the Notes, in any

other document evidencing or securing any Secured Obligation, or in law or equity. No delay or omission shall impair any such right, power or remedy accruing under this Trust Deed or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. Receipt of income, earnings, awards and any other monies or evidences thereof, pursuant to the provisions of this Trust Deed, and any disposition of the same by Trustee or Beneficiary shall not constitute a waiver of the power of sale or right of foreclosure by Trustee or Beneficiary in the event of default or failure of performance by Grantor of any covenant or agreement contained herein.

4.7 Rules of Construction. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular includes the plural. The headings of each paragraph are for information and convenience only and do not limit or affect the contents of any provisions of this Trust Deed.

4.8 Severability. If any terms of this Trust Deed or the application of this Trust Deed to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Trust Deed or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Trust Deed shall be valid and enforceable to the fullest extent permitted by law.

4.9 Successor in Interest. This Trust Deed applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, executors, administrators, successors and assigns. All obligations of Grantor under this Trust Deed are joint and several. The terms "Beneficiary" shall mean the named Beneficiary and the holders and owners, including pledgees, of the Notes, whether or not named as Beneficiary herein, and any successors and assigns of any holders and/or owners of the Notes.

4.10 Notices. All notices to be given pursuant to this Trust Deed shall be in writing and shall be deemed given and received on the date personally delivered or deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, sent to the parties at their addresses on page 1.

Any party may change its address set forth herein by ten (10) days prior written notice to all other parties. Any time period provided in the giving of any notice under this Trust Deed shall commence upon the date such notice is given.

4.11 Modifications. This Trust Deed may not be amended, modified or changes, nor shall any waiver of any provisions of this

Trust Deed be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

4.12 Attorneys' Fees. If any litigation is instituted to enforce or interpret any provision of this Trust Deed, or of the Notes, the prevailing party shall be entitled to collect, in addition to all other amounts, its court costs, title search costs, and reasonable attorneys' fees, both at trial and on appeal, such amount to be set by the court before which the matter is heard. If Beneficiary is the prevailing party, such costs and attorneys' fees shall be secured by this Trust Deed.

4.13 Nonmerger. In no event shall any two or more interests of Beneficiary in the Premises merge or be deemed to have merged unless and until Beneficiary executes, acknowledges and records and instrument which expressly states by its terms that such a merger has been accomplished. Each and every interest of Beneficiary in the Premises, or any portion thereof, shall at all times remain separate and distinct and Beneficiary may institute separate foreclosure factions wit respect to any such interest.

4.14 Priority of Trust Deed. The priority of this Trust Deed shall not be affected by renegotiation or adjustment of the interest rate provided in the Notes (which may increase or decrease the amount of periodic payments or extend or shorten the term of this Trust Deed), an increase in the underlying obligation as a result of deferment of all or a portion of interest payments and the addition of such payments to the outstanding balance of the obligation, and/or the execution of new agreements which reflect such changes.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed as of the date set forth below. The deed of trust shall be effective as of June 30, 1993.

THE MARINE SALVAGE CONSORTIUM, INC.
an Oregon corporation

By: _____

J. H. Lentz *pres.*

STATE OF OREGON

County of Multnomah

)
) ss
)

This instrument was acknowledged before me on this 30 day of June, 1993, by J.H. Leitz as President of The Marine Salvage Consortium, Inc., an Oregon corporation.



Marsha Elam
Notary Public for Oregon
My Commission Expires: 10/11/96

Exhibits:

- A - Legal Description
- B - Title Exceptions

EXHIBIT "A"

That portion of Section 17, Township 1 North, Range 1 East, Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at the terminus of N. Basin Avenue as dedicated and accepted by the City of Portland by Ordinance No. 119402; thence South $52^{\circ}15'$ East, 401.10 feet along the centerline of N. Basin Avenue to the intersection of N. Basin Avenue and N. Ensign Avenue; thence South $37^{\circ}45'$ West 550.00 feet to the true point of beginning; thence North $52^{\circ}15'$ West, 858.23 feet; thence South $37^{\circ}45'$ West, 193.00 feet, more or less, to the mean low water line of Swan Island Lagoon; thence Southeasterly along the mean low water line of Swan Island Lagoon as follows:

South $17^{\circ}00'$ East 93.00 feet; South $50^{\circ}40'$ East 171.00 feet; South $24^{\circ}15'$ East 54.00 feet; South $46^{\circ}45'$ East 80.00 feet; South $60^{\circ}50'$ East 65.00 feet; South $49^{\circ}00'$ East 162.00 feet; South $46^{\circ}35'$ East 220.00 and South $39^{\circ}48'35''$ East 40.03 feet; thence leaving said mean low water line North $37^{\circ}45'$ East 314.00 feet, more or less, to the true point of beginning.

EXHIBIT B

1. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of the Willamette River and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.

2. Any adverse claim based upon the assertion that some portion of said land have been removed from or brought within the boundaries thereof by an avulsive movement of the Willamette River or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.

3. An easement created by instrument, including the terms and provisions thereof:

Recorded: June 25, 1965 in Book 323, page 25
In Favor of: City of Portland, a municipal corporation
For: Sewer
Affects: The Southeasterly portion

4. Covenants, Conditions, Restrictions and Maintenance Assessment, including the terms and provisions thereof, but deleting restrictions, if any, based on race, color, religion or national origin, imposed by instrument:

Recorded: September 17, 1973 in Book 949, page 842

5. Agreement, including the terms and provisions thereof:

Dated: February 13, 1974
Recorded: February 13, 1974 in Book 971, page 1184
Executed By: Fred Devine Diving & Salvage, Inc.

6. Conditions and Restrictions contained in Conditional Use Permit No. CU-24-74:

Recorded: April 18, 1974 in Book 981, page 186

7. Conditions and Restrictions contained in Conditional Use Permit No. CU-31-74:

Recorded: May 6, 1974 in Book 984, page 110

8. Conditions and Restrictions contained in Greenway Permit No. GP 2-84:

Recorded: February 22, 1984 in Book 1728, page 388

9. Unrecorded leases or periodic tenancies, if any.

PROMISSORY NOTE

June 30, 1993

\$850,000.00

PARTIES: THE MARINE SALVAGE CONSORTIUM, INC.,
an Oregon corporation,
5650 N. E. Columbia Blvd.
Portland, Oregon 97218
("Buyer")

BBD&R, INC.,
an Oregon corporation,
6211 North Ensign Blvd.
Portland, Oregon 97217
("Seller")

RECITALS:

Buyer promises to pay to Seller the sum of EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$850,000.00), together with interest thereon at the rate of 8.5% per annum from the date of this note. Buyer may prepay a portion of the balance at any time, provided that the note shall not be paid in full prior to June 30, 1998. All payments shall be applied first to accrued interest to date of payment and then to principal.

Buyer shall make monthly payments of not less than \$10,538.78 commencing on July 31, 1993 and continuing on the last day of each month until June 30, 2003, when all remaining accrued and unpaid interest and principal shall be due and payable.

In the event any payment is not made as required by this note, Seller may employ an attorney for purposes of collection and, in such event, Buyer shall reimburse Seller's reasonable costs and attorneys' fees incurred thereby. If any litigation is instituted

BBD&R
HAS ORIGINAL

Signed Copy

in the litigation, including any appeals therefrom or any costs and attorneys' fees incurred in the event either party files bankruptcy.

DATED this 30th day of June, 1993.

THE MARINE SALVAGE CONSORTIUM,
INC.

By: J.H. Pitt

Name: J.H. Pitt

Title: Pres.

PROMISSORY NOTE

June 30, 1993

\$100,000.00

PARTIES: THE MARINE SALVAGE CONSORTIUM, INC.,
an Oregon corporation,
5650 N. E. Columbia Blvd.
Portland, Oregon 97218
("Buyer")

BBD&R, INC.,
an Oregon corporation,
6211 North Ensign Blvd.
Portland, Oregon 97217
("Seller")

RECITALS:

Buyer promises to pay to Seller the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), together with interest thereon at the rate of 8.5% per annum from the date of this note. Buyer may prepay a portion of the balance at any time. All payments shall be applied first to accrued interest to date of payment and then to principal.

All accrued and unpaid interest and principal shall be due and payable on June 30, 1994.

In the event any payment is not made as required by this note, Seller may employ an attorney for purposes of collection and, in such event, Buyer shall reimburse Seller's reasonable costs and attorneys' fees incurred thereby. If any litigation is instituted to enforce payment of this note, the prevailing party shall recover from the other party, in addition to costs and disbursements allowed by law, such sums as the court may allow as attorneys' fees

in the litigation, including any appeals therefrom or any costs and attorneys' fees incurred in the event either party files bankruptcy.

DATED this 30th day of June, 1993.

THE MARINE SALVAGE CONSORTIUM,
INC.

By: L.H. Leitz

Name: J. H. LEITZ

Title: PRES.

AGREEMENT FOR SALE AND PURCHASE
OF BUSINESS ASSETS

DATE: January 12, 1993

PARTIES: The Marine Salvage Consortium, Inc.,
an Oregon corporation,
5650 N.E. Columbia Blvd
Portland, Oregon 97218
("BUYER")

Fred Devine Diving & Salvage, Inc.
an Oregon corporation,
6211 North Ensign Blvd.
Portland, Oregon 97217
("SELLER")

RECITALS

A. Seller operates a business primarily engaged in marine salvage and diving. Seller's principal place of business is 6211 North Ensign Blvd., Portland, Oregon. Seller owns equipment, inventories, contract rights, leasehold interests, and miscellaneous assets used in connection with the operation of its business.

B. Buyer desires to acquire all the assets, used or useful, or intended to be used, in the operation of Seller's business, and Seller desires to sell such assets to Buyer.

It is therefore agreed:

SECTION 1: ASSETS PURCHASED.

1.1 **Assets Purchased.** Seller shall sell to Buyer and Buyer shall purchase from Seller, on the terms and conditions set forth in this Agreement, the following assets owned by Seller as of the date of this Agreement ("Assets"):

1.1.1 All equipment, furniture, motor vehicles, and watercraft, including the vessel SALVAGE CHIEF.

1.1.2 All other tangible personal property including property located at the offices or warehouse of Seller, located on board the SALVAGE CHIEF, or currently on rental to third parties.

1.1.3 Seller's business name ("Fred Devine Diving and Salvage") trademarks, service marks, logos, customer and supplier lists, office forms, manuals, certificates, documentation, and parts books.

1.1.4 A list of assets will be compiled and attached to this Agreement as Exhibit "A".

1.2 **Assets Retained.** Seller shall retain all cash, bank accounts, tax refunds, insurance refunds, deposits, and accounts

receivable as of the date of closing, and its interest in Devine Marine Environmental and Harbor Towing.

SECTION 2. PURCHASE PRICE FOR ASSETS.

The purchase price for the Assets shall be \$820,000.00. Buyer acknowledges that Seller has been operating with a skeleton crew for several months and has not undertaken diving or salvage jobs during this period of time. The purchase price is therefore based on the value of assets and no provision has been included for going concern value.

SECTION 3. INVENTORIES.

3.1 JOINT INVENTORY The parties have conducted a joint inventory prior to closing. Buyer has made its own inspection of the equipment and other assets in arriving at the purchase price set forth herein. The parties have agreed not to conduct a closing inventory. Seller agrees to operate the business until closing and shall not sell, lease, encumber or otherwise dispose of any of the Assets.

3.2 MEMORABILIA. Seller shall identify certain personal property belonging to shareholders of Seller upon execution of this Agreement, and obtain the consent of Buyer prior to the removal of the personal items.

SECTION 4. PAYMENT OF PURCHASE PRICE.

The price of the Assets is Eight Hundred Twenty Thousand Dollars (\$820,000.00) and shall be paid as follows:

4.1 One Hundred Thousand Dollars (\$100,000.00) shall be paid to Seller upon execution of this Agreement. Seller is not required to maintain this payment in a separate escrow account, and may use all or part of the payment for ongoing operating expenses.

4.2 At closing, Buyer shall pay Seller \$720,000.00.

SECTION 5. ADJUSTMENTS.

The operation of Seller's business and related income and expenses up to the close of business on the day before the closing date shall be for the account of Seller and thereafter for the account of Buyer. Expenses, including, but not limited to, utilities, personal property taxes, rents, and similar matters, shall be pro-rated between Seller and Buyer as of the close of business on the date of closing in accordance with the schedule attached hereto as Exhibit "B". The pro-rations shall be made and paid, insofar as reasonably possible, on the closing date, with settlement of any remaining items to be made within 30 days following the closing date.

SECTION 6. OTHER AGREEMENTS.

Prior to closing the Seller shall have terminated all agreements it has with Dutra Construction Company including the

Referral Agreement effective August 10, 1992, the Equipment Lease dated September 1, 1992 and the Tenancy Agreement dated September 9, 1992. Unless otherwise agreed in writing, prior to closing, the termination of said agreement will be effective on or before the closing date and all equipment leased to Dutra Construction Company shall be returned to Seller. All other current agreements of Seller affecting the assets shall be identified and reviewed by Buyer and at Buyer's option, either assigned by Seller to Buyer or terminated by Seller.

SECTION 7. COLLECTION OF SELLER'S ACCOUNTS RECEIVABLES.

Buyer shall have no right or obligation to collect Seller's accounts receivables current at closing. Any funds from the accounts receivable current at closing which come into Buyer's possession shall be promptly forwarded, in the form received, to Seller.

SECTION 8. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller represents and warrants to Buyer as follows:

8.1 Title to Assets. Except as provided in this Agreement, Seller now holds and will convey to Buyer at closing good and marketable title to the Assets, free and clear of restrictions on or conditions to transfer or assignment, and free and clear of liens, pledges, charges, or encumbrances.

8.2 Brokers and Finders. Seller has not employed any broker or finder in connection with the transactions contemplated by this Agreement and has taken no action that would give rise to a valid claim against any party for a brokerage commission, finder's fee, or other like payment.

8.3 Transfer Not Subject to Encumbrances or Third Party Approval. The execution and delivery of this Agreement by Seller and the consummation of the contemplated transactions will not result in the creation or imposition of any valid lien, charge or encumbrance on any of the Assets and will not require the authorization, consent or approval of any third party, including any governmental subdivision or regulatory agency.

8.4 Labor Agreements. Seller is a party to collective bargaining or other agreements governing the wages, hours and terms of employment of Seller's employees. Seller will provide to Buyer a list of any labor dispute or labor trouble involving employees of Seller.

8.5 Litigation and Wage Claims. Seller has no knowledge of any claim, litigation, proceeding or investigation, pending or threatened, against Seller or any of the Assets subject to this Agreement that might result in any adverse change in the title or condition of the Assets except as disclosed in the schedule of liabilities provided to Buyer pursuant to Section 20.

8.6 Seller's Insurance. Seller will furnish copies of certificates of insurance to Buyer prior to closing. Valid

policies for insurance will be outstanding and duly in force on the closing date.

8.7 Accuracy of Representations and Warranties. None of the representations or warranties of Seller contain or will contain any untrue statement of a material fact or omit or will omit or misstate a material fact necessary in order to make the statements contained herein not misleading.

8.8 Corporate Existence. Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Oregon. Seller has all requisite corporate power and authority to enter into this Agreement and perform its obligations hereunder.

8.9 Authorization. The execution, delivery and performance of this Agreement have been duly authorized and approved by the Board of Directors and shareholders of Seller, and this Agreement constitutes a valid and binding Agreement of Seller in accordance with its terms.

SECTION 9. REPRESENTATIONS OF BUYER.

Buyer represents and warrants as follows:

9.1 Brokers and Finders. Buyer has not employed any broker or finder in connection with the transactions contemplated by this Agreement and has taken no action that would give rise to a valid claim against any party for a brokerage commission, finder's fee, or other like payment.

9.2 Accuracy of Representations and Warranties. None of the representations or warranties of Buyer contain or will contain any untrue statement of a material fact or omit or will omit or misstate a material fact necessary in order to make the statements contained herein not misleading.

9.3 "AS IS." Buyer has fully inspected the Assets and, other than the representations contained herein, is buying the Assets in an "AS IS/WHERE IS" condition.

9.4 Corporate Existence. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Oregon. Buyer has all requisite corporate power and authority to enter into this Agreement and perform its obligations hereunder.

9.5 Authorization. The execution, delivery and performance of this Agreement have been duly authorized and approved by the Board of Directors and shareholders of Buyer, and this Agreement constitutes a valid and binding Agreement of Buyer in accordance with its terms.

SECTION 10. COVENANTS OF SELLER.

10.1 Seller's Operation of Business Prior to Closing. Between the date of this Agreement and the closing date, Seller will:

10.1.1 Using its best efforts, continue to operate the business that is the subject of this Agreement in the usual and ordinary course and in substantial conformity with all applicable laws, ordinances, regulations, rules or orders, and will use its best efforts to preserve its business organization and preserve the continued operation of its business with its customers, suppliers and others having business relations with Seller.

10.1.2 Not assign, sell, lease, encumber or otherwise transfer or dispose of any of the Assets, whether now owned or hereafter acquired. Seller shall not permit any liens to be placed on the Assets, and will promptly remove any lien which attaches to any of the Assets.

10.1.3 Maintain all the Assets in their present condition, reasonable wear and tear and ordinary usage excepted.

10.2 Access to Premises and Information. At reasonable times prior to the closing date, Seller will provide Buyer and its representatives with reasonable access during business hours to the Assets, titles, contracts and records of Seller and furnish such additional information concerning Seller's business as Buyer from time to time may reasonable request.

10.3 Employee Matters. Effective as of the closing date, Seller will pay to or on behalf of each employee who is terminated, all wages, claims, commissions, accrued vacation pay, fringe benefits, and payroll taxes earned up to the time of termination, including overtime pay. Seller shall provide Buyer access to all personnel records of current employees prior to closing. Seller will retain some employees after closing. Seller is solely liable for all wages, claims, commissions, accrued vacation pay, fringe benefits and payroll taxes earned by the employees retained by Seller.

10.4 Change of Name. On or prior to the closing date, Seller and Buyer will take all action necessary or appropriate to permit Buyer to legally commence use of Seller's name on the closing date.

10.5 Conditions and Best Efforts. Seller will use its best efforts to effectuate the transactions contemplated by this Agreement and to fulfill all the conditions of the obligations of Seller under this Agreement, and will do all acts and things as may be required to carry out its obligations under this Agreement and to consummate and complete this Agreement.

SECTION 11. COVENANTS OF BUYER.

Buyer will use its best efforts to effectuate the transactions contemplated by this Agreement and to fulfill all the conditions of Buyer's obligations under this Agreement, and shall perform all acts and things as may be required to carry out Buyer's obligations and to consummate this Agreement.

SECTION 12. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS.

The obligation of Buyer to purchase the Assets is subject to the fulfillment, prior to or at the closing date, of each of the following conditions, any one or portion of which may be waived in writing by Buyer:

12.1 No Suits or Actions. At the time of closing, no claim, lien, encumbrance, demand, suit, or legal action relating to or affecting the Assets, including the title to any of the Assets, shall be pending. If any claim, lien, encumbrance, demand, suit or legal action relating to or affecting any of the Assets, including title to any of the Assets be pending, Buyer shall be entitled at its option to a refund of all initial payment and shall be relieved of any further obligation under this Agreement if the summation of the amount of claims, liens, encumbrances, demands, settlements, and judgments (including reasonable costs and attorney fees) exceed the amount due by Buyer to Seller under this Agreement. If the summation of claims, liens, encumbrances, demands, settlements, and judgments (including reasonable costs and attorney fees) is less than the amount due by Buyer to Seller under this Agreement, Buyer shall deposit the amount equal to the summation of all claims, liens, encumbrances, demands, settlement and judgments and anticipated costs (including reasonable attorney fees) in an interest bearing escrow account. The purpose of the escrow account is to pay all claims, liens, encumbrances, demands, settlements and judgments pending at closing and anticipated costs (including reasonable attorney fees). Disbursements from the escrow account will require the signature of an authorized representative of the Seller and an authorized representative of the Buyer. Buyer to cooperate with Seller in the payment of any claim, lien, encumbrance, demand, settlement or judgment. Seller to be responsible for all costs incurred by Buyer, including reasonable attorney fees, in resolving any claim, demand, suit or legal action pending at time of closing. If Seller is not aware of any such claim, lien, encumbrance, demand, suit or legal action at time of closing date but one or more exists, Seller shall indemnify Buyer and hold it harmless from all expenses and costs, including any judgment or reasonable settlement and attorneys fees incurred by Buyer in resolving any such claim, lien, encumbrance, demand, suit or legal action.

12.2 Representations, Warranties, and Covenants of Seller. All representations and warranties made in this Agreement by Seller shall be true as of the closing date fully as though such representations and warranties had been made on and as of the closing date, and Seller shall not have violated or shall not have failed to perform in accordance with any covenant contained in this Agreement.

SECTION 13. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER.

The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the closing date, of each of the following conditions, any one or a portion of which may be waived in writing by Seller:

13.1 Representations, Warranties, and Covenants of Buyer. All representations and warranties made in this Agreement by Buyer shall be true as of the closing date fully as though such representations and warranties had been made on and as of the closing date, and Buyer shall not have violated or shall not have failed to perform in accordance with any covenant contained in this Agreement.

SECTION 14. RISK OF LOSS.

The risk of loss, damage or destruction to any of the Assets prior to closing shall be borne by Seller. In the event of such loss, damage or destruction, Seller, to the extent reasonable, shall replace the lost property or repair or cause to repair the damaged property to its condition prior to the damage. If replacement, repairs, or restorations are not completed prior to closing, then the purchase price shall be adjusted by an amount agreed upon by Buyer and Seller that will be required to complete the replacement, repair or restoration following closing.

SECTION 15. INDEMNIFICATION AND SURVIVAL.

15.1 Survival of Representations and Warranties. All representations and warranties made in this Agreement shall survive the closing of this Agreement, except that any party to whom a representation or warranty has been made in this Agreement shall be deemed to have waived any misrepresentation or breach of representation or warranty of which such party had knowledge of such misrepresentation or warranty prior to closing.

15.2 Seller's Indemnification. Seller agrees to and shall indemnify and hold Buyer, its successors, and assigns, harmless against any and all damages or deficiencies arising out of or resulting from any breach of any representation, warranty, or agreement set forth in this Agreement, or the untruth or inaccuracy thereof, or related to the operation of Seller's business or its use of Assets. Seller further agrees to and shall indemnify and hold Buyer harmless against any and all debts, liabilities, chooses in action, or claims of any nature, absolute or contingent, together with all expenses and legal fees arising out of or resulting from any such breach, untruth, inaccuracy, operation or use or which may be incurred to compromise or defend such liabilities, chooses in action, or claims of any nature, absolute or contingent, including but not limited to any and all liabilities for federal income or excise taxes, or state or municipal taxes of any nature; provided, however, that said indemnity shall not apply to the extent that any of the above-listed items are covered by insurance.

This indemnity shall survive the closing. Buyer, or its successors and assigns, shall notify Seller of any such liability, asserted liability, breach or warranty, untruth or inaccuracy of representation, or any claim thereof, with reasonable promptness, and Seller or its legal representatives shall have, at their election, the right to compromise or defend any such matter involving asserted liability of Seller through counsel of their own choosing, at the expense of Seller. Such notice and opportunity to compromise or defend, if applicable,

shall be a condition precedent to any liability of Seller under this indemnity.

In the event that Seller undertakes to compromise or defend any such liability, Seller shall notify Buyer, or its successors or assigns, in writing promptly of Seller's intention to do so, and Buyer, or its successors or assigns, shall cooperate with Seller and its counsel in compromising or defending any such liabilities.

15.3 Buyer's Indemnification. Buyer agrees to defend, indemnify and hold Seller harmless from and against:

15.3.1 Any and all claims, liabilities and obligations of every kind and description arising out of or related to the use or ownership of the Assets following closing or arising out of Buyer's failure to perform obligations of Seller assumed by Buyer pursuant to this Agreement.

15.3.2 Any and all damages or deficiencies resulting from any material misrepresentation, breach of warranty or covenant, or nonfulfillment of any agreement on the part of Buyer under this Agreement.

SECTION 16. CLOSING.

2/2/93
16.1 **Time and Place.** This Agreement shall be closed at the offices of Cable, Huston, Benedict, Haagensen & Ferris, 1001 S.W. Fifth Avenue, Suite 2000, Portland, Oregon 97204, at 10:00 a.m. on the 25th of January 1993, or at such other time and place as the parties may mutually agree in writing. If the closing does not occur because of a breach of contract by one or more parties, the breaching party or parties shall remain liable for breach of contract.

16.2 **Obligations of Seller at the Closing.** At the closing and coincidentally with the performance by Buyer of its obligations described in Section 16.4, Seller shall deliver to Buyer the following:

16.2.1 All of the Assets free and clear of all liens, encumbrances and security agreements along with Bills of Sale and Certificates of Title properly executed. Attached hereto as Exhibit "C" are the forms of the documents to be executed.

16.2.2 Cash or check payable to Buyer for prorated items owing to Buyer under Section 5 of this Agreement.

16.2.3 All manuals, maintenance records, certificates, inspections or other documentation pertaining to any Asset.

16.2.4 Possession of the business facilities to be conveyed pursuant to this Agreement and Seller shall deliver to and endorse over any applicable leases for current tenants other than Buyer.

16.2.5 Such other certificates and documents as may be called for by the provisions of this Agreement.

16.3 Payment of Seller's Liabilities. At closing, Seller shall pay the following creditors and obtain appropriate releases of any security interests in Assets:

Enterprise Leasing
Multnomah County personal property taxes
Shareholder loans secured by Assets
Pettit-Morry Co.

Seller shall promptly satisfy all other claims, encumbrances and liens against the Assets.

16.4 Obligations of Buyer at the Closing. At the closing and coincidentally with the performance by Seller of his obligations described in Section 16.2, Buyer shall deliver to Seller the Following:

16.4.1 A cashier's check payable to Seller in the amount specified in Section 4.2, subject to any off-set pursuant to this Agreement.

16.4.2 Cash or check payable to Seller for pro-rated items owed to Seller, if any, under Section 5 to this Agreement.

16.4.3 Such other certificates and documents as may be called for by the provisions of this Agreement.

16.5 Rights and Parties if Sale Does Not Close. Seller shall refund the \$100,000.00 paid by Buyer upon the execution of this Agreement if the sale of Assets is not closed for any reason other than Buyer's failure to perform. Seller shall pay Buyer immediately upon Buyer's request. If Seller is unable to refund the full \$100,000, Seller shall execute a promissory note in the form attached as Exhibit "D" payable to Buyer with interest at 8.5% per annum, payable in 180 days, and shall execute and deliver to Buyer a good and sufficient security agreement granting Buyer a security interest in the Assets to secure payment of the Promissory Note.

SECTION 17. RIGHTS AND OBLIGATIONS SUBSEQUENT TO CLOSING.

17.1 Books and Records. This sale does not include the books of account and records of Seller's business. Seller shall retain its general ledger books and records, but shall make them available for inspection and copying by Buyer from time to time upon reasonable request. Seller shall cooperate with Buyer in providing to Buyer Seller's past pricing practices, contracts and customer and supplier lists.

17.2 Use of Office and Computer. Seller shall be permitted to use one office on the second floor of 6211 North Ensign, to be designated by Buyer, for a period of up to 12 months. In addition, Seller shall be permitted to continue using the personal computer and related software, which has Seller's accounting data, for a period of up to 12 months. The computer

and software shall be delivered to Buyer when it is no longer needed by Seller, but in no event later than one year from the closing date.

SECTION 18. DEFAULT.

18.1 Buyer's Default. If Buyer fails to perform any of the terms, covenants, conditions or obligations of this Agreement, time of payment and performance being of the essence, then Seller, subject to the requirements of the notice provided in Section 18.3, may exercise each and all of the remedies granted to Seller by this Agreement.

18.2 Seller's Default. If the Seller fails to perform any of the terms, covenants, conditions or obligations of this Agreement, Buyer, subject to the requirements of the notice provided in Section 18.3, may exercise each and all of the remedies granted to Buyer by this Agreement.

18.3 Notices of Default. Neither party shall be deemed in default for failure to perform the terms, covenants and conditions of this Agreement, until notice of the default has been given to the party and the party has failed to remedy the default within thirty (30) days after the notice.

SECTION 19. TERMINATION OF AGREEMENT.

19.1 By Mutual Consent. This Agreement may be terminated by mutual written consent of Buyer and Seller.

19.2 Breach of Representations and Warranties; Failure of Conditions. Buyer may elect by notice to Seller, and Seller may elect by notice to Buyer, to terminate this Agreement if:

19.2.1 The terminating party shall have discovered a material error, misstatement or omission in the representations and warranties made in this Agreement by the other party which shall not have been cured by such other party within thirty (30) days after written notice to such other party specifying in detail such asserted error, misstatement or omission, or by the closing date, whichever first occurs.

19.2.2 All of the conditions precedent of the terminating party's obligations under this Agreement as set forth in either Section 12 or 13, as the case may be, have not occurred and have not been waived by the terminating party on or prior to the closing date.

19.3 Closing Notwithstanding the Right to Terminate. The party with a right to terminate this Agreement shall not be bound to exercise such right and its failure to exercise such right shall not constitute a waiver of any other right it may have under this Agreement, including, but not limited to, remedies for breach of a representation, warranty or covenant.

SECTION 20. CREDITOR'S CLAIMS. Seller shall provide Buyer upon execution of this Agreement a list of all creditors who have a claim against the Seller or any asset subject to this Agreement

along with the amount of claim currently owing. Seller shall indemnify Buyer and hold it harmless against all claims made by Seller's creditors, including but not limited to reasonable attorney's fees and costs in defending such claims.

SECTION 21. MISCELLANEOUS.

21.1 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective personal representatives, successors, and, to the extent permitted by Section 22.2, assigns of the parties.

21.2 Assignment. The assignment of this Agreement by either party shall require the prior written consent of the other party, which consent shall not be unreasonably withheld, provided that assignment by Seller to its shareholders pursuant to a plan of liquidation shall not require Buyer's consent.

21.3 Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses on page 1 hereof. All notices and other communications shall be deemed to be given at the expiration of the three (3) days after the date of certification. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided above.

21.4 Arbitration. Any and all disputes arising under this agreement between the parties hereto shall be submitted to arbitration. Arbitration shall be the exclusive means of resolving such disputes. Unless otherwise agreed, the commercial arbitration rules at the American Arbitration Association (hereinafter referred to as the "Rules") shall govern all aspects of the arbitration. The arbitrators will be bound by this agreement and to the laws of the State of Oregon and the United States. Either party may initiate arbitration by serving a notice on the other party containing a demand for arbitration and a statement setting forth the nature of the dispute, the amount involved and the remedies sought. Unless the parties can agree on a single arbitrator, the party initiating arbitration shall within 20 days after the initiation of arbitration appoint one of the arbitrators and give the other party notice of the appointment. Within 20 days after receipt of notice of the first arbitration, the other party shall appoint an arbitrator. The two arbitrators thus appointed shall appoint a third arbitrator. If the first two arbitrators are unable to agree on a third arbitrator the third arbitrator will be appointed from a panel of neutral arbitrators prepared by the American Arbitration Association. The arbitrators shall hear and decide the matter as soon as practical. The arbitration shall occur in Portland, Oregon at a place designated by the arbitrators. The arbitrators may authorize such prehearing discovery as they deem appropriate and the circumstances. The arbitrator's award shall be final and conclusive on the parties except as provided under Oregon law. The arbitration award may be reduced to judgment in accordance with the provisions of Oregon law.

21.5 Amendments. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and its supersedes all prior contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties.

21.6 Confidential Information. Neither Seller nor Buyer shall disclose to third parties any confidential information received from the other in the course of investigating, negotiating, and performing the transactions contemplated by this Agreement, whether the Agreement is fully performed or not by either party.

21.7 Headings. The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

21.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21.9 Severability. If in any judicial proceeding, a court shall refuse to enforce all the provisions of this Agreement, any unenforceable provision shall be deemed eliminated from the Agreement for the purpose of such proceeding as is necessary to permit the remainder of the Agreement to be enforced in such proceeding.

21.10 Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

21.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

SELLER:
FRED DEVINE DIVING &
SALVAGE, INC.

BUYER:
THE MARINE SALVAGE
CONSORTIUM, INC.

BY: Charles W. Parks
Name: Charles W. Parks
Title: President

BY: Richard Campbell
Name: RICHARD CAMPBELL
Title: Secretary/Treasurer